

AMENDED IN SENATE APRIL 30, 2003

AMENDED IN SENATE APRIL 10, 2003

SENATE BILL

No. 478

Introduced by Senator Dunn

February 20, 2003

An act to add Section 230.2 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

SB 478, as amended, Dunn. Victims of crime: work absences for judicial proceedings.

Existing law prohibits an employer from discharging or discriminating against an employee for taking time off to serve on a jury.

This bill would require that an employer allow an employee who is a victim of a crime, or certain persons who are related to a crime victim or who sustained a pecuniary loss as a result of an injury or death to a crime victim, to be absent from work in order to attend judicial proceedings related to the crime.

This bill would prohibit an employer from discharging, threatening, demoting, suspending, or in any manner discriminating or retaliating against an employee who is absent from work in accordance with these provisions, require reinstatement of the employee and reimbursement for lost wages and benefits, where applicable or in any manner discriminating against an employee, in compensation or other terms, conditions, or privileges of employment, including, but not limited to the loss of seniority or precedence, because the employee is absent from

work pursuant to this bill, and would authorize the employee to file a complaint with the Division of Labor Standards Enforcement.

~~This bill would require that prosecutors, or their agents, inform employees covered by this bill of their rights and, by so doing, would impose a state-mandated local program encourage District Attorneys and Victim/Witness offices to make information regarding this bill available for distribution at their offices.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: *yes no*.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 230.2 is added to the Labor Code, to
- 2 read:
- 3 230.2. (a) As used in this section:
- 4 (1) "Derivative victim" means an individual who sustains
- 5 pecuniary loss as a result of injury or death to a victim.
- 6 (2) "Immediate family member" means spouse, child,
- 7 stepchild, brother, stepbrother, sister, stepsister, mother,
- 8 stepmother, father, or stepfather.
- 9 (3) "Registered domestic partner" means a domestic partner,
- 10 as defined in Section 297 of the Family Code, and registered
- 11 pursuant to Part 2 (commencing with Section 298) of Division 2.5
- 12 of the Family Code.
- 13 (4) "Victim" means a person against whom a crime has been
- 14 committed.
- 15 (b) An employer, and any agent of an employer, shall allow an
- 16 employee who is a victim of a crime, an immediate family member
- 17 of a victim, a registered domestic partner of a victim, the child of

1 a registered domestic partner of a victim, or a derivative victim to
2 be absent from work in order to attend judicial proceedings related
3 to that crime.

4 (c) Before an employee may be absent from work pursuant to
5 subdivision (b), the employee shall give the employer a copy of the
6 notice of each scheduled proceeding that is provided to the victim
7 by the agency responsible for providing notice, unless advance
8 notice is not feasible. When advance notice is not feasible or an
9 unscheduled absence occurs, the employer shall not take any
10 action against the employee if the employee, within a reasonable
11 time after the absence, provides the employer with documentation
12 evidencing the judicial proceeding from any of the following
13 entities:

14 (1) The court or government agency setting the hearing.

15 (2) The District Attorney or prosecuting attorney's office.

16 (3) The Victim/Witness office that is advocating on behalf of
17 the victim.

18 (d) An employee who is absent from work pursuant to
19 subdivision (b) may elect to use the employee's accrued paid
20 vacation time, personal leave time, sick leave time, compensatory
21 time off that is otherwise available to the employee, or unpaid
22 leave time, unless otherwise provided by a collective bargaining
23 agreement, for an absence pursuant to subdivision (b). The
24 entitlement of any employee under this section shall not be
25 diminished by any collective bargaining agreement term or
26 condition.

27 (e) An employer shall keep confidential any records regarding
28 the employee's absence from work pursuant to subdivision (b).

29 ~~(f) Any employee who is discharged, threatened with~~
30 ~~discharge, demoted, suspended, or in any other manner~~
31 ~~discriminated or retaliated against in the terms and conditions of~~
32 ~~employment by his or her employer because the employee is~~
33 ~~absent for a purpose set forth in subdivision (b) shall be entitled to~~
34 ~~reinstatement and reimbursement for lost wages and work benefits~~
35 ~~caused by the acts of the employer.~~

36 *(f) An employer may not discharge from employment or in any*
37 *manner discriminate against an employee, in compensation or*
38 *other terms, conditions, or privileges of employment, including,*
39 *but not limited to the loss of seniority or precedence, because the*
40 *employee is absent from work pursuant to this section.*

(g) (1) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated or retaliated against in the terms and conditions of employment by his or her employer because the employee has exercised his or her rights as set forth in subdivision (b) may file a complaint with the Division of Labor Standards Enforcement of the Department of Industrial Relations pursuant to Section 98.7.

(2) Notwithstanding any time limitation in Section 98.7, an employee filing a complaint with the division based upon a violation of subdivision (b) shall have one year from the date of occurrence of the violation to file his or her complaint.

~~(h) The prosecutor, or an agent of the prosecutor, shall inform all victims, derivative victims, and immediate family members and registered domestic partners of victims of their rights under this section.~~

(h) District Attorney and Victim/Witness offices are encouraged to make information regarding this section available for distribution at their offices.

SEC. 2. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.